

## PART 15

### CONTRACTING BY NEGOTIATION

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##### SUBPART 15.4 - SOLICITATION AND RECEIPT OF PROPOSALS AND QUOTATIONS

15.404 Presolicitation notices and conferences.

15.404-90 Engaging industry participation.

(a) General. Communicating with industry is an essential part of the procurement process, especially when seeking to reengineer business processes. The purpose of establishing dialogues is to elicit industry participation in the planning and execution of the acquisition. Early

communication with industry promotes a clearer understanding of requirements, enables industry to respond more effectively with its proposals, and produces better end products, services, and solutions. The contracting officer should tailor the nature and extent of the dialogue to fit each acquisition. While government support personnel (e.g., technical and requirements) and customers are encouraged to participate in the dialogue with industry during the presolicitation phase, the contracting officer shall remain the government point of contact with industry after the solicitation is issued, and shall ensure compliance with the rules of FAR Part 3 during all phases of each procurement.

(b) Objectives. Dialogues with industry can facilitate accomplishing the following objectives:

(1) overcome barriers to acquiring commercial items and technologies and emulating commercial business practices (e.g., eliminate government-unique specifications, terms, and conditions in favor of performance requirements and commercial practices; streamline and automate the acquisition process);

(2) develop more effective acquisition strategies and procurements tailored to elicit the best commercial solutions available;

(3) emulate commercial manufacturing, distribution, and inventory management techniques (e.g., manufacturing on demand, direct vendor delivery, electronic tracking of inventory, and the electronic commercial catalogue);

(4) create new buyer-seller relationships that reduce suppliers' dependence on defense business and facilitate integration of defense and commercial industrial bases (e.g., teaming arrangements, dual-use technologies, and shared production agreements with suppliers); and

(5) make available a defense mobilization base capable of responding to peacetime supply requirements and in time of emergencies (see 6.302-3(90)).

(c) Procedures. The following practices are useful techniques to elicit dialogues with industry which shall be considered during the acquisition planning stage of a procurement:

(1) Meetings with prospective offerors foster beneficial relationships and afford opportunities for meaningful dialogues with industry. Such meetings may occur in a variety of situations and at various times during the acquisition cycle. When meeting with industry, the contracting officer is cautioned to preclude providing an unfair advantage to any offeror, and should provide identical information to all offerors. The contracting officer is reminded that information which is proprietary in nature or that would disclose a potential offeror's technical or business approach shall not be released.

(2) Presolicitation notices and conferences (FAR 15.404), sources sought announcements, and letters to known potential sources are effective ways to identify interested suppliers and available products and capabilities. Requests for information are especially useful market research tools for obtaining preliminary information from industry. Broad agency announcements facilitate submission of creative solutions, advanced technical approaches, or innovative improvements to business processes (see FAR 35.016 and DLAD 6.302-3(90)). A broader base of industry participation can be elicited by augmenting notices to industry pertaining to government requirements published in the Commerce Business Daily with similar notices in industry publications, electronically, or by other means, such as those addressed at FAR 5.101(b).

(3) Draft requests for proposals (DRFP's) involve industry in providing comments on any aspect of the proposed acquisition prior to issuing a solicitation (see 15.405-90).

(4) Pre-proposal conferences (FAR 15.409) provide opportunities for interested sources to ask questions about pending acquisitions and obtain general acquisition-related information, and provide helpful industry feedback in such areas as acquisition and evaluation strategy, statements of work, and other solicitation requirements.

(5) The use of performance specifications and statements of work to describe customer needs maximizes the potential for industry participation in acquisitions by providing industry the most flexibility in proposing new and creative approaches to requirements (see FAR 11.002(a)(2)).

15.405 Solicitations for information or planning purposes.

15.405-90 Draft requests for proposals (DRFP's)

(a) General. Draft requests for proposals (DRFP's) are an effective means of eliciting a dialogue with industry which can resolve potential contract issues and obtain early feedback from prospective offerors on any aspect of the proposed acquisition prior to issuing the solicitation. Such information can lead to significant cost savings and productivity enhancements; reduce proposal preparation and evaluation time; reduce the need for solicitation amendments and preclude other delays that disrupt timely completion of the acquisition; and result in better proposals, end products, and services. The intent to issue a DRFP shall be documented in the written acquisition plan.

(b) The use of DRFP's can encourage potential sources to provide valuable comments on such matters as the following:

(1) proposed customer requirements, including identification of requirements that are "cost drivers";

(2) proposed acquisition and evaluation strategy, including business and technical approaches;

(3) contract methodology, including how best to elicit proposals based on current and emerging commercial practices, and contract type;

(4) methods to reduce proposal and contract costs and explore technology advancements and contract incentives; and

(5) revisions to performance, schedule, or other contractual requirements.

(c) Applicability. It is appropriate to use DRFP's whenever, in the contracting officer's judgement, the acquisition will benefit significantly from early industry involvement. The DRFP has particular value when the government is seeking state-of-the-art solutions or when the proposed acquisition strategy is complex, involves new concepts, or contains demonstration requirements. The contracting officer shall consider such matters as the nature of the procurement (e.g., critical or complex item or service, or commercial item, service, or solution), the amount of information already available, the impact on procurement lead time, and the additional cost to both the government and industry prior to deciding to issue a DRFP. Generally, a DRFP is followed by the issuance of a solicitation; however, a decision not to proceed with a solicitation may be made by the contracting officer. The contracting officer shall include FAR 52.215-3, Solicitation for Information or Planning Purposes, in each DRFP.

(d) Procedures. The contracting officer should publicize the DRFP using a variety of methods, such as CBD announcements and those methods addressed at 15.404-90(c)(1) through (5) and FAR 5.101(b). The publication and response times for proposed contract actions at FAR 5.203 are not mandatory for DRFP's. The contracting officer should establish reasonable times for receipt of responses to DRFP's that reflect the nature of the product or service, the supply base, and the specifics of the individual procurement. Requirements shall be synopsisized in accordance with FAR 5.203 prior to issuing the solicitation. Alternatively, notice of the availability of the DRFP and a future date when the solicitation will be issued may be included in the same synopsis.

15.406 Preparing Requests for Proposals (RFPs) and Requests for Quotations (RFQs).

15.406-2 Part I - The schedule.

(b) Section B, Supplies or services and prices/costs.

(90) Guidance at 14.201-2(b)(90) also applies to RFPs and RFQs

(c) Section C, Description/specifications/work statement.

(90) Clearly stamp or otherwise indicate "Foreign Military Sales (FMS) Requirements" on the face of each negotiated contract which includes FMS requirements.

#### 15.406-3 Part II - Contract clauses.

##### (a) Section I, Contract clauses.

(91) The contracting officer shall insert the clause at 52.214 -9004, Subcontracting to other industrial preparedness planned producers, in solicitations and contracts whenever contracting without providing for full and open competition under authority of FAR 6.302 -3 (10 U.S.C. 2304(c)(3)).

#### 15.406-5 Part IV - Representations and instructions.

##### (b) Section L, Instructions, conditions and notices to offerors or quoters.

(91) A provision substantially similar to 52.214 -9000, Postponement of Opening of Offers, shall be inserted in solicitations.

##### (c) Section M, Evaluation factors for award.

(90) A provision substantially as provided at 52.214 -9002, Trade Discounts, may be included in Requests for Proposals and Requests for Quotations when appropriate. See 14.201 -5 Part IV (c)(90) for the effect of this provision.

(91) When prices are solicited on incremental quantities (i.e., 500, 1000, 1500, 2000 units) or range quantities (i.e., 500 -999, 1000-1499, 1500-1999 units), notice shall be given to all offerors that award may be made on the basis of that quantity and price combination that is most advantageous to the Government without discussion of proposals.

(92) For negotiated contracts which are anticipated to be awarded using the adequate price competition exemption to the P.L. 87 -653 requirements (FAR 15.804-1(a)(1)(i)), price shall be stated to be a substantial factor. If weights are assigned to the various evaluation factors, price must be weighted at least 20 percent for an adequate price competition exemption to be claimed.

#### 15.412 Late Proposals and Modifications. (DEVIATION)

(c)(2) Defense Fuel Supply Center (DFSC) is authorized to use DFSC clause 52.215-9F33 Shipping Point (s) Used in Evaluation of F.O.B. Origin Offers (FUELS APR 1984) in lieu of FAR clause 52.215 -10 Late Submissions, Modifications, and With Strategic Petroleum Reserve (SPR) program.

### SUBPART 15.6 - SOURCE SELECTION

#### 15.601 Definitions.

"Evaluation standard" means a specific level of merit against which a proposal is measured.

"Preaward survey (PAS) evaluation factor" is an amount of money which is added solely for evaluation purposes to the offer of an apparently successful offeror whose performance history normally dictates the conduct of a preaward survey.

"Source inspection evaluation factor" is a fixed amount of money added solely for evaluation purposes to the offer of an apparently successful offeror with a history of delivering nonconforming material on destination-assigned contracts/purchase orders.

"Source selection advisory council" (SSAC) is a group of professional or managerial Government personnel chosen from functional fields related to the acquisition (e.g., manufacturing management and control, systems, production, quality assurance, finance, logistics, law, and contracting) appointed by the source selection authority to advise the source selection authority on the conduct of the source selection process and to prepare for the source selection authority a comparative analysis of the evaluation results of the source selection evaluation board.

"Source selection evaluation board" (SSEB) is a group of fully qualified Government personnel representing various technical and functional disciplines who possess the professional skills and knowledge required to evaluate proposals and report the group's findings to the contracting officer, the source selection advisory council, or the source selection authority, as appropriate.

"Source selection plan" is a plan, prepared for the approval of the source selection authority, for organizing and conducting the evaluation and analysis of proposals and selection of the source(s).

#### 15.604 Responsibilities.

(a) The decision to utilize any of the "buying best value" source selection procedures (see 15.605 and 15.613) vests with the contracting office. Such decisions should balance the time and resources required to accomplish the procedure against the expected improvements in the quality of award decisions through the exercise of business judgment.

#### 15.605 Evaluation factors.

(a) Each evaluation factor or subfactor for a given solicitation must address a separate aspect of the offeror's proposal or capabilities in order to avoid double counting. For example, past performance may not be evaluated as a separate technical evaluation factor if the same performance is evaluated elsewhere as part of another evaluation factor or subfactor. It is not double counting, however, to combine a delivery evaluation factor, which evaluates different offered delivery dates, with the past performance factor (e.g., the Automated Best Value **System**), which evaluates past performance in assessing the risk that an offeror will deliver on the promised date.

(b)(1)(90) The requirements of DFARS 215.605 apply to all solicitations for contracts which use source selection procedures when the estimated value exceeds \$500,000 unless omission is approved by the chief of the contracting office.

(b)(1)(91) To implement the evaluation criteria contained in DFARS 215.605(b)(2)(A)(2)(i)-(iv) and (vi), the contracting officer shall establish an evaluation factor for the extent of an offeror's proposed use of small, small disadvantaged and women-owned small businesses in order to incentivize offerors to subcontract with such concerns. The weight or relative order of ranking of this factor is at the discretion of the contracting officer, but this factor may not be combined with any other factor. This factor is separate and distinct from the subcontracting plan (FAR 19.219-9) and is also separate and distinct from the MBA factor (see (b)(1)(92)). All offerors, both small and large businesses, shall be scored/rated on this factor. Proposals that demonstrate a strong commitment to affording small, small disadvantaged, and women-owned small businesses a real opportunity to participate, shall be rated more favorably than those that demonstrate little or no such commitment.

(b)(1)(91)(i) In making decisions whether to exercise options on contracts, the contracting officer shall evaluate whether a firm has or has not performed in accordance with its small, small disadvantaged and women-owned small business subcontract requirements in the contract. The Defense Contract Management Command's small business offices shall be used to assist in assessing a contractor's compliance with these requirements.

(b)(1)(91)(ii) Solicitation provisions. Solicitation provisions similar to the ones at 52.215-9002, Socioeconomic Proposal, and 52.215-9003, Socioeconomic Support Evaluation, shall be included in all solicitations that meet the criteria in 15.605(b)(1)(90).

(b)(1)(92) Proposed participation in the DLA MBA Program (see **19.90**) shall be separately considered as an evaluation factor in all long term contracts expected to exceed \$500,000 per year.

(b)(2)(90) When R&S considerations (see 17.93) are critical to the award decision, the offeror's ability to surge shall be included as a technical evaluation factor. Examples of R&S/surge related elements which can be evaluated include: ability to meet specified delivery time frames; capability to surge during contingencies and mobilization; operating plan

during strikes; ability to quickly increase production; quality of critical/emergency items the offeror can produce, etc.

(b)(90) The use of "cost of doing business" evaluation factors in offer evaluation is a best value buying procedure. (See 15.613-90 for a discussion of buying best value.) There are two such evaluation factors that may be used:

(i) Source inspection factor (**13.106-90(a)**, 14.201-8(a)(90), 15.605(b)(93), and 52.213-9001).

(ii) Preaward survey factor (**13.106-90(b)**, 14.201-8(a)(91), 15.605(90), and 52.215-9001).

(91) Cost factors in offer evaluation are the expression of the Government's recognition that it incurs costs resulting from poor contractor performance. When contractors deliver nonconforming supplies or provide nonconforming services or are delinquent in delivery, the contracting officer normally requires a PAS to determine such offeror's responsibility for subsequent acquisitions, and requires inspection and acceptance at source, rather than at destination. The contracting officer also generally requests a preaward survey when a prospective contractor: has recently been removed from the GSA List of Parties Excluded from Federal Procurement Programs; is undergoing or has recently undergone reorganization under bankruptcy laws; has received a negative preaward survey in the recent past; or has failed to liquidate indebtedness.

(92) Cost factors in offer evaluation can be applied to any procurement. The PAS and source inspection factors can be applied in conjunction with any other source selection procedure.

(93) When a determination has been made in accordance with 15.604 to utilize the evaluation factor coverage at **13.106-90(a)** and when the conditions set forth in **13.106-90(a)** exist, the provision at 52.213-9001, Evaluation Factor for Source Inspection, shall be inserted in solicitations. The coverage at 13.107(90)(a) applies regardless of the dollar value of the acquisition, except that the contracting officer shall add \$175, multiplied by the number of source inspections required, to the offeror's price.

(94) When a determination has been made in accordance with 15.604 to utilize the evaluation factor coverage at **15.605-90**, and when the conditions set forth in **15.605-90** exist, the provision at 52.215-9001, Evaluation Factor for Preaward Survey, shall be inserted in solicitations.

15.605-90 Preaward survey (PAS) cost evaluation factor.

(1) Conducting a PAS is an additional expense to the Government (see paragraph (b)(91), above). Therefore, there are certain situations (based on a contractor's prior performance) for which it is appropriate to apply a factor for offer evaluation purposes to the apparently low offer of a prospective contractor when the Government must base its responsibility determination on the results of the survey of that firm or individual. When the decision to utilize this paragraph has been made, an amount which is the equivalent of the cost of the survey (see paragraph (2) below) shall be added to the offer of a prospective contractor (manufacturer or nonmanufacturer) who:

(i) Has been listed on the GSA List of Parties Excluded from Federal Procurement Programs within the past 3 years (or other locally-determined time period); or

(ii) Is undergoing or has undergone reorganization under bankruptcy laws within the past 3 years (or other locally-determined time period); or

(iii) Is on the Contractor Alert List (CAL), or is otherwise known to the contracting officer to have a poor or marginal performance history; or

(iv) Has, within the past year (or other locally-determined time period), received a negative PAS for an item within the same Federal Supply Class (FSC), or for the same type of service, as the item or service being purchased; or

(v) Has failed to liquidate indebtedness to DLA (the extent of such indebtedness shall be determined locally); and

(vi) The contracting officer has determined must be surveyed for the contracting officer to make a responsibility determination (see 9.104-1(90)(a) and 9.106-1).

(2) The amount which has been determined to be the average amount of the direct costs of performance of a preaward survey is \$369. This is the amount that shall be applied in accordance with (90)(1) above, regardless of the level of survey (formal or informal) to be performed, and regardless of whether the contract in question is for supplies or services. (Determination of the level of survey is the prerogative of the contract administration office (CAO), and depends upon the breadth, accuracy, and immediacy of information available within the CAO. See 9.106-1.)

(3) If application of the preaward survey evaluation factor displaces the prospective contractor from its proposed award position, and if there is a technically-acceptable offer from another prospective contractor, the survey shall not actually be performed, and a SF 1403 shall not be transmitted to the CAO.

#### 15.605-91 Evaluation standards.

Standards may be quantitative or qualitative. The standards shall be established before receipt of proposals. They shall not be included in the solicitation and shall not be released to any potential offeror nor to anyone who is not directly involved in the source selection evaluation.

#### 15.608 Proposal evaluation.

**(a)(2) Performance on prior contracts in subcontracting with and assisting small, small disadvantaged and women-owned small businesses (DFARS 215.605(b)(2)(A)(2)(v)) shall be a part of the past performance evaluation.**

**(a)(3)** Technical evaluation. Technical evaluation shall be conducted against evaluation standards. Comparative assessment of technical proposals is reserved for the SSAC and/or the Source Selection Authority.

#### 15.611 Best and final offers.

(c)(i)(A) The Senior Procurement Executive (AQ) has delegated the authority in DFARS 215.611(c)(i)(A) to the Executive Director, Procurement **Management**. Such authority is further delegated to DLA HCAs (see DFARS 202.101), without power of redelegation. (See also 15.612(b)(1)(90)(x).)

(c)(i)(B) The authority in DFARS 215.611(c)(i)(B) is delegated to Commanders (the Administrators, **DAPSC** and DNSC) of the activities listed at 2.101. This authority may be delegated to a level no lower than the chief of the contracting office, (not delegable except that the Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation).

(c)(ii) The Heads of contracting activities and of all DLA contracting offices are required to submit the information required by DFARS 215.611(c)(ii) on an annual basis. In addition, the following shall be included in the report:

(90) The Request for Proposals (RFP) and contract numbers for competitive acquisitions.

(91) The number of times subsequent best and final offers (BAFOs) were requested for each competitive RFP.

(92) The results of the second or subsequent BAFO (including whether the order of selection in the competitive range was changed and whether the second or subsequent BAFO accomplished the intended objective).

(c)(iii)(C) Submit annual reports to HQ DLA, ATTN: MMPOA, 10 days following the end of the fiscal year. MMPOA shall prepare consolidated summary reports for submission to the Deputy Director (Acquisition).

#### 15.612 Formal source selection.

(a) General. The formal source selection procedures of this section shall be followed whenever the source selection authority is an official outside the primary level field activity responsible for the acquisition. Formal source selection procedures should also be used in other acquisitions where the complexity or sensitivity of the acquisition justifies the additional resources involved.

##### (b) Responsibilities.

(1)(i) The following personnel shall designate the source selection authority in writing for their respective activity acquisitions.

(A) Chief of the contracting office at the DSCs (for DPSC, Chiefs of Contracting Divisions for their respective commodities and the Director, Directorate of Contracting, for installation acquisitions.)

(B) Commanders, or their Deputies, DRMS, Defense Distribution Regions, DAPSC, T-ASA, DCMCI, and DCMDs.

(C) Administrators, DAPSC and DNSC.

(ii) Designation of the source selection authority shall be commensurate with the complexity and dollar value of the acquisition. The above cited personnel may designate themselves as the source selection authority or may recommend that the source selection authority be an individual at a higher management level within the activity or DLA than themselves. The Executive Director, Procurement **Management** reserves the right to designate the source selection authority following such actions as a meeting of the Acquisition Planning Executive Council (DLA-HSI 4105.3, Acquisition Planning Executive Council (APEC)), upon notification of changes in contracting processes, techniques, or methods (see 1.590) or upon review of solicitations forwarded in accordance with 1.690 -6(b).

(1)(90) The source selection authority--

(i) Is responsible for the conduct of the entire source selection process including proposal solicitation, evaluation, selection, and contract award;

(ii) Shall tailor the selection process to suit individual acquisitions to minimize the cost of the process for Government and industry;

(iii) Has, subject to law and applicable regulations, full responsibility and authority to select the source(s) for award and approve the execution of the contract(s);

(iv) Shall review, to assure consistency with the requirements of the solicitation, and approve in writing the source selection plan (see FAR 15.612(c) and 15.612(c) below) and the evaluation factors before the solicitation is issued and before any presolicitation conferences are conducted;

(v) Shall appoint the chairperson and members of the source selection advisory council (if one is established) and the source selection evaluation board, assuring that these personnel have the skills and experience needed to execute the source selection plan (see 15.612(90)(N)). A source selection advisory council should only be established for the most complex, highest dollar value acquisitions;

(vi) Shall provide the source selection advisory council, if one is established, and the source selection evaluation board with guidance and special instructions to conduct the evaluation and selection process;



(vii) Shall take necessary precautions to ensure against premature or unauthorized disclosure of source selection information (see FAR 3.104, FAR 15.612(e) and 15.612(e) below);

(viii) Shall review and approve the contracting officer's determination to exclude offerors from the competitive range at any point in the selection process;

(ix) Shall make the final selection decision(s) and document the supporting rationale in a source selection decision document;

(x) Shall review and approve the contracting officer's decision to issue a second call for best and final offers;

(xi) Shall advise higher level management, as appropriate, of the outcome of the source selection before any award announcements/ notifications are made;

(xii) Shall decide whether the source selection advisory council and the source selection evaluation board are to be combined. If a decision is made to combine these two bodies, the source selection authority shall assure that the combined body accomplishes the functions and meets the objectives of both the source selection advisory council and the source selection evaluation board. When these two bodies are combined, the source selection authority shall assign the specific duties and responsibilities from (91) and (92) below to be performed by the combined body. Any of those functions not assigned to the combined body shall be assumed by the source selection authority;

(xiii) Shall require all persons receiving source selection information to comply with DLAR 5500.1, Standards of Conduct and FAR 3.104. Any individual whose participation in the source selection process might result in a real, apparent, or possible conflict of interest shall be disqualified from participation in the process; and **all participants in source selection councils, boards or otherwise having access to source selection information will be asked to sign a certificate substantially the same as the following concerning both conflict of interest and nondisclosure of sensitive information pertaining to the source selection:**

***Source Selection Non-disclosure and Conflict of Interest***

**Name:** \_\_\_\_\_ **Grade:** \_\_\_\_\_

**Job Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_ **Source Selection:** \_\_\_\_\_

**Date:** \_\_\_\_\_

***Briefing Acknowledgment***

***1. I acknowledge I have been assigned to the source selection indicated above. I am aware that unauthorized disclosure of source selection or bid or proposal information could damage the integrity of this procurement and that the transmission or revelation of such information to unauthorized persons could subject me to prosecution under the Procurement Integrity Laws or under other applicable laws.***

***2. I do solemnly swear or affirm that I will not divulge, publish, or reveal by word, conduct, or any other means, such information or knowledge, except as necessary to do so in the performance of my official duties related to this source selection and in accordance with the laws of the United States, unless specifically authorized in writing in each and every case by a duly authorized representative of the United States Government. I take this obligation freely, without any mental reservation or purpose of evasion and in the absence of duress.***

***3. I acknowledge that the information I receive will be given only to persons specifically granted access to the source selection information and may not be further divulged without specific prior written approval from an authorized individual.***

4. If, at any time during the source selection process, my participation might result in a real, apparent, possible, or potential conflict of interest, I will immediately report the circumstances to the Source Selection Authority.

5. All personnel are requested to check the applicable block:

☐ I have submitted a current SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, or SF 278, Executive Personnel Financial Disclosure Report, as required by DODD 5500.7.

☐ I will submit a SF 450 or SF 278 to the SSEB chairperson within ten work days from the date of the certificate.

☐ I am not required to submit a SF 450 or SF 278.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

and

(xiv) Shall comply with the following procedures when a source selection evaluation board is being established to evaluate offers for a commercial activity solicitation (see FAR subpart 7.3):

(A) The source selection authority shall submit the names of proposed board members to the Civilian Personnel Office (CPO) that supports the function under study. The CPO shall identify any board nominees who would be adversely affected if the function were contracted out. Anyone so identified will be disqualified.

(B) The source selection authority shall provide proposed board members a brief explanation of the purpose of a CA study. This explanation shall specifically include discussion of the impact on employees currently performing a function if it is contracted out. Proposed board members will then be asked to sign a conflict of interest statement (see example at the end of this paragraph) affirming that they know of no adverse impact on themselves, or on members of their household or immediate family, that will result from the cost comparison outcome. Anyone unable or unwilling to make that affirmation shall be disqualified. The additional paragraphs for CA studies are as follows:

*I understand that my participation on this board will support a decision either that this function will continue to be performed by Government employees or be awarded to a contractor for performance.*

*I affirm that, to the best of my knowledge, neither I nor any member of my household or immediate family is employed in a position that would be adversely affected if this function is contracted out. For the purposes of this statement, I understand that every position currently devoted, full or part time, to directly performing the function under study is assumed to be adversely affected by a decision to contract out.*

I, (nominee's name) , have been nominated to serve on a source selection evaluation board to evaluate contractor bids or proposals for the (title of function) function at (activity name).

I understand that my participation on this board will support a decision either that this function will continue to be performed by Government employees or be awarded to a contractor for performance.

I affirm that, to the best of my knowledge, neither I nor any member of my household or immediate family is employed in a position that would be adversely affected if this function is contracted out. For the purposes of this statement, I understand that every position currently devoted, full or part time, to directly performing the function under study is assumed to be adversely affected by a decision to contract out.

(source selection evaluation board nominee's signature)

(date)

(2) The source selection authority shall, from those nominees qualified, designate members of the source selection evaluation board.

(2)(90) The source selection advisory council shall --

(i) Assure that personnel resources and time devoted to source selection are not excessive in relation to the complexity and dollar value of the requirement;

(ii) Review and approve the evaluation factors and evaluation standards developed by the functional/requiring/program office;

(iii) Determine if it is desirable to weight the evaluation factors;

(iv) Designate the chairperson and membership of the source selection evaluation board;

(v) Review and approve the bidders mailing list, or the source list recommended by the functional/requiring/program office;

(vi) Assure that appropriate actions are taken under the FAR regulatory system to obtain competition in the selection process;

(vii) Review and approve the solicitation and authorize its release;

(viii) Review and provide comments to the source selection authority on the contracting officer's competitive range determination;

(ix) Analyze the evaluation of the source selection evaluation board and apply weights, if established, to the evaluation results;

(x) Prepare the source selection advisory council analysis report and submit it, along with a copy of the source selection evaluation board's summary report, to the source selection authority;

(xi) Provide briefings and consultations as requested by the source selection authority;

(xii) Provide a recommendation as to source(s) to be selected if requested by the source selection authority; and

(xiii) Prepare a source selection decision document for the source selection authority's signature, if requested by the source selection authority.

(2)(91) The source selection evaluation board shall --

(i) Conduct an indepth, fair, and impartial review and evaluation of each proposal (excluding the cost or price proposal) against the solicitation requirements and the approved evaluation factors;

(ii) Identify those aspects of a proposal which require clarification or which contain deficiencies;

(iii) Rate each proposal in relation to the evaluation standards;

(iv) Prepare and submit the source selection evaluation report to the contracting officer, to the source selection authority, and to the source selection advisory council, as determined by the source selection authority, along with a summary report of the findings. The report shall include each evaluator's report which shall indicate, at a minimum, in addition to the requirements of FAR 15.608(b) --

(A) What is offered;

(B) A description of whether the proposal meets or fails to meet the standard;

(C) A description of any strengths, weaknesses, or risks in the proposal;

(D) A description of what, in the evaluator's opinion, may be done to remedy a deficiency; and

(E) What impact (technical, schedule, or cost/price risk) correction of the deficiency will have on the offerors' overall ability to perform; and

(v) Provide briefings and consultations concerning the evaluation as required by the source selection authority or the source selection advisory council.

(2)(93) The contracting officer shall --

(i) Develop the business strategy and prepare the acquisition plan. This should be done in conjunction with the functional/requiring/program office;

(ii) Review the source selection plan and evaluation standards prepared by the functional/requiring/program office for consistency with the requirement and compliance with the FAR regulatory system, and provide them to the source selection authority for approval;

(iii) Review the evaluation factors, as part of the source selection plan, for source selection authority approval, assuring that the relative importance of the evaluation factors is in a form for use in the solicitation;

(iv) Process the proposed source selection plan for approval by the source selection authority after it is coordinated with appropriate organizations;

(v) Prepare the solicitation and submit it for review and approval by the source selection advisory council and MMPPB (see 15.612(b)(91)(G), 15.612-90(e), and 1.690-6(b));

(vi) Assure that the source selection advisory council and the source selection evaluation board are briefed on their responsibilities before they begin a review of the proposals;

(vii) Evaluate cost or price proposals (see FAR 15.608(a));

(viii) Assure that offeror's cost or price proposals are not made available to the personnel conducting the technical evaluation. The contracting officer should, however, discuss the details of technical proposals with technical evaluators to aid in the evaluation of costs associated with labor categories and hours, materials, manufacturing processes, and other elements of cost or price;

(ix) Provide to the source selection authority or to the source selection advisory council the evaluation of the reasonableness of each offeror's proposed price. If an offeror's price proposal is determined to be unrealistic or unreasonable, the reasons for this conclusion shall be stated;

(x) Determine which proposals are in the competitive range (see FAR 15.609(a)), recommend the competitive range offers to the source selection authority, and obtain the approval of the source selection authority to the determination;

(xi) Conduct discussions with offerors, as necessary, after the competitive range has been determined and approved by the source selection authority; and

(xii) When the source selection authority is a DLA executive, e.g., the Deputy Director (Acquisition), or the Executive Director, Procurement **Management**, obtain all required reviews and approvals, with the exception of Congressional notification, prior to the final briefing to the source selection authority for the final selection decision.

(c) Source Selection Plan.

(1) Describe the proposed source selection authority, source selection advisory council, and the source selection evaluation board organizations listing recommended members by name, position title, and office symbol.

(3) A copy of the acquisition plan may be appended to the source selection plan to satisfy the requirements of FAR 15.612(c)(3).

(5) The rating system shall be structured to identify the significant strengths, weaknesses, and risks associated with each proposal, and

thereby make it easier to distinguish significant differences between proposals. The objective of the rating system is to display an assessment of all important aspects of the offerors' proposals. The cost area will not be rated but must be ranked in order of importance when award will not be made on the basis of the low acceptable technical/management proposal.

(c)(90) Include an introduction which describes briefly the supplies or services to be acquired.

(e) Safeguarding information.

(1) The source selection authority shall approve the source prior to release of any source selection data.

(2) The source selection authority shall ensure that individuals participating in the source selection process avoid any discussions regarding proposals or any related matters to preclude even the appearance of favoritism or any other improper action. Independent evaluators who have access to proposal information, are bound by the same rules regarding conflict of interest (see 15.612(b)(90)) and information disclosure as members of the source selection organization, regardless of whether they are designated members of the source selection advisory council or the source selection evaluation board.

(e)(90) The effectiveness and integrity of the source selection process require that all data and information received or developed during the source selection process be handled with the utmost discretion to avoid any compromise. Except for the evaluation factors listed in the solicitation, source selection data are excluded from automatic public disclosure in accordance with DoD Directive 5400.7, DoD Freedom of Information Act Program, DoD 5400.7-R, DoD Freedom of Information Act Program, and DLAD 5400.14, DLA Freedom of Information Act Program.

#### 15.612-90 Solicitations.

The solicitation shall convey to offerors the technical, schedule, cost, and actual requirements of the acquisition. The solicitation shall also:

(a) Include the evaluation factors as they appear in the source selection plan and as approved by the source selection authority.

(b) Require offerors to:

(1) Prepare and submit proposals aligned with the evaluation factors to facilitate Government review and evaluation of proposals.

(2) Identify technical, cost, schedule, manufacturing, or performance risks, as appropriate, associated with their proposals, together with their approaches for resolving or avoiding the identified risks.

(c) Provide guidance to offerors regarding proposal page limitations and number of copies of proposals required.

(d) Notify offerors that, as part of the technical evaluation, proposals that are unrealistic in terms of technical or schedule commitments, or unrealistically low in price, will be considered indicative of a lack of understanding of the solicitation requirements.

(e) In conjunction with the source selection plan, the evaluation factors, evaluation standards, and the acquisition plan, be reviewed as prescribed in 1.690-7(c) (also see 15.612(b)(90)(D), 15.612(b)(91)(B) and (G)).

#### 15.613 Alternative source selection procedures.

(90) The competitive source selection process can facilitate solicitation and submission of available and emerging commercial technologies and innovative solutions to the agency's business problems. This approach can be structured to provide the flexibility necessary to comparatively assess different approaches to common agency problems, and select the proposal or proposals determined to best facilitate the agency's business process reengineering objectives. To encourage industry participation, the contracting officer should tailor the evaluation factors and assessment criteria to attain the desired degree of flexibility for evaluating various solutions. In stating the government's

needs, the contracting officer shall describe the requirements in terms of performance or outcomes desired, rather than of design requirements or applications sought. By so doing, offerors are not limited to a single approach, and the contracting officer is able to compare and evaluate the various solutions proposed. The basis for evaluating offers may be as broad as a general statement of need or as specific as a performance work statement. Offerors may be asked to submit brief proposal abstracts or white papers during an initial phase, with full proposals requested in a subsequent phase or phases only from those sources determined to demonstrate the best commercial solutions. Alternatively, the contracting officer may establish a single cutoff date for receipt of full proposals.

#### 15.613-90 Buying best value.

(a) Policy. Best value buying procedures can be used to introduce value into the source selection process, for large and small purchases, by fostering competition on quality as well as price. They demonstrate our uncompromising commitment to buying and supplying the highest quality products and services. Best value buying procedures encourage award decisions on the basis of a business judgment and recognize that an award to other than the low offeror may represent the overall best value to the Government. Use of best value buying procedures is encouraged where they would help improve the quality of award decisions and in giving contracting officers the authority to exercise business judgment in their award decisions.

(b) Definitions. "Best value buying procedures" are those procurement procedures applied in the evaluation for award process, with or without use of formal source selection procedures, and from which a best value decision can be made.

#### 15.613-92 Automated Best Value **System**

(a) Scope. The Automated Best Value **System** (ABVS) is a past performance information system that provides the contracting officer with historical performance data. ABVS analyzes historical quality and delivery performance within each Federal Supply Class (FSC), and provides a numeric score for each offeror that has a performance history. Additionally, ABVS provides an aggregate score for historical performance in all FSCs at the Defense Supply Center (DSC).

(b) Applicability. ABVS will be used primarily for best value award decisions under negotiated acquisitions processed through the DLA Preaward Contracting System (DPACS). ABVS can be used as a source of past performance information when utilizing formal or streamlined source selection techniques, when determining whether to exercise an option, or when determining whether to request a preaward survey. ABVS may be used in conjunction with total small business set-asides and total small and disadvantaged business set-asides (but see FAR 19.502-3(b)(2) when a requirement is to be partially set-aside for small business).

#### (c) Overview.

(1) The ABVS score is a reflection of a contractor's past delivery and quality performance over a 12 month period. The delivery history is based on the most recent 12 calendar months exclusive of the most recent 2 calendar months prior to score calculation, and all delinquent undelivered or partially delivered lines. The 2 month offset allows the opportunity to verify late deliveries and determine cause for open contracts. Delinquent deliveries are held against a contractor for 12 months. The quality score is based on quality discrepancies and confirmed laboratory test failures measured over the most recent 12 month period with a 1 month offset. Offset periods are not grace periods. Verified late deliveries and nonconformances that occur during the offset period will be reflected in the score when the offset expires. The past performance timeframe may be expanded up to 24 months at the center's discretion.

(2) An ABVS score represents the aggregate of the individual weighted scores for each of the following performance indicators: product quality nonconformances, packaging nonconformances, laboratory test results, delinquencies, and order rejections where the company has demonstrated an intent to perform. Whenever the contractor's performance on any contract line item number (CLIN) in the FSC results in a contractor caused discrepancy, the score for that element will be less than 100. Contractor

performance data within the specified timeframes is collected from source data bases. ABVS scores are calculated for a calendar month for each FSC and for all FSCs at the DSC, and will remain in effect until the next monthly update.

(3) Data Sources. The quality performance data is retrieved from the DLA Customer Depot Complaint System (CDCS) and the System for Analysis of Laboratory Testing (SALT). The delivery performance data is retrieved from the Standard Automated Materiel Management System (SAMMS) Active Contract File (ACF), the DLA Operations Research Office's archived closed and open contract file (ALLACF) and a file containing contracts closed within the last 6 months.

(d) Use in Source Selection.

(1) Past performance information is an indicator of performance risk. Contractors will be scored on the basis of their past performance in the solicited FSC, and all FSCs for which they have a history at the DSC. No minimum ABVS scores will be established to dictate award eligibility, technical acceptability, responsibility or nonresponsibility.

(2) When the solicitation includes an ABVS provision, the contracting officer shall use the ABVS score in a comparative assessment of offers. The contracting officer should not rely solely on the performance score and should consider reviewing the data used to construct the performance score if the circumstances of the procurement dictate (e.g., significant price differential or close scores).

(3) ABVS requires the contracting officer to exercise business judgement. ABVS does not rate or rank offered price. When the offeror with the highest ABVS score is not the lowest price, a price for past performance trade-off decision must be made. Factors that should be considered in the trade-off decision include: item designation as a weapon-system or personnel support item; inventory supply status and required delivery schedule; limited sources of supply and industrial base concerns; dollar difference between the low technically acceptable offeror and a higher-priced, higher scored offeror, and the presence of new offerors.

(4) Each DSC may establish a minimum volume of business below which an offeror will not be scored. An offeror with insufficient performance history in the solicited FSC will be evaluated based on the performance score for its cumulative performance history in all FSCs at the Center. Center-wide scores are not as relevant as FSC scores for performance required under the anticipated contract. For this reason, a higher Center score may not represent lower performance risk than a lower FSC score. Care should be taken when making trade-off decisions based on Center versus FSC scores.

(5) The contracting officer should also consider the volume of business on which the performance score is based as a measure of confidence that the score indicates performance risk on future contracts. When a minimum level of business has not been established for an FSC, award to an offeror with a greater level of business activity and the same or lower score, at a higher price must be approved at a level above the contracting officer. However, an offeror that satisfies the minimum level of business requirement can not be displaced by an offeror with a greater level of business activity and the same or lower score, at a higher price.

(6) An offeror with no performance history in any FSC procured by the center will not be scored, and will be considered a "new offeror." However, the lack of a score does not preclude the contracting officer from making an award to one of these offerors. New offeror status will not be grounds for award disqualification. A new offeror may represent lower performance risk than offerors with marginal or poor performance scores and may be more favorably considered than scored offerors. Contracting officers should use both the ABVS FSC score and the average ABVS FSC score to determine the relative risks of scored offers and new offerors.

(7) Price related evaluation factors (e.g., Buy American Act evaluation factors, Small Disadvantaged Business (SDB) evaluation preferences, transportation factors, delivery evaluation factors, etc.) shall be added to the applicable offered price, and the evaluated price

must be used in determining the trade-off of price for past performance. ABVS shall not be a reason for waiving application of the SDB preference.

(8) Each center is responsible for establishing internal review procedures and controls for ABVS awards. Dollar thresholds for higher level review will be established locally. There is no dollar limit above the lowest offered price that can be paid on awards using ABVS. Some award decisions will be more difficult than others. In those cases, it may be beneficial for the award decision to be a team effort until best value award decisions becomes a routine business practice.

(9) When the DSC uses ABVS for source selection, each offeror's performance score is confidential source selection information during the month in which it is effective, and as such, is protected from release under the procurement integrity rules (see FAR 3.104-4 and 3.104-5). The score is available only to the business entity to which it applies. The score and all related data must carry a restrictive legend substantially the same as the following: "Confidential Contractor Information - for Official Use Only." This legend must appear on all hard-copy print outs. Release of ABVS information to any other Governmental entity, including any other DSC, must have the concurrence of the local counsel. Release to any other private entity shall be strictly limited, have the concurrence of the local counsel, and be in accordance with Freedom of Information Act (FOIA, 5 U.S.C. 552) guidelines (see FAR Part 24.2, Freedom of Information Act, and DFARS 224.2, Freedom of Information Act). Any FOIA decision to release performance data to other contractors will be made on a case-by-case basis.

(e) Data Review and Access.

(i) Quality nonconformances and delinquencies are shared with contractors through routine contract administration as they arise. In addition, each DSC must allow offerors the opportunity to review and challenge their negative data prior to its use in source selection. Contractors will be provided access to their negative past performance data via the most favorable means available to the DSC (i.e., electronic bulletin board, electronic data interchange). Contractors shall also be notified of the date on which the data will be used and the method for challenging the data.

(ii) It is in the Government's interest to identify and resolve as many challenges as possible prior to using the data in source selection. Each DSC shall determine an appropriate challenge period to accomplish this. All negative performance data used to calculate the ABVS score will be made available to contractors via an electronic bulletin board (EBB), and should not be used in source selection for at least 14 days. In addition to the data used to calculate the ABVS score, DSCs should provide contractors access to quality nonconformance data that falls within the 1 month offset period, and delinquency data that falls within the 2 month offset period (e.g., CLINs shipped after the contract delivery date; CLINs not shipped 31 to 60 days after the contract delivery date; and CLINs shipped on-time but the quantity is not in accordance with the Variation in Quantity Clause). Delinquencies aged 30 days or less will not be available for data verification unless they are established as contractor caused.

(iii) Contractors who challenge their performance data must provide evidence that substantiates their claim to the ABVS Administrator. Challenged data that has been investigated and validated prior to the next monthly ABVS update will be reflected in the new score. (Corrections to data that fall within the offset period are not considered in that month's score.) Challenges that are received before the end of the challenge period, but are not resolved prior to the next monthly update will be flagged as challenged. The challenge flag alerts the contracting officer to look beyond the ABVS score; it shall not be used to eliminate any offeror from award consideration.

(iv) The challenge period for the performance data used to calculate the ABVS score for a particular month ends the day before the new score becomes effective. (For example, the challenge period for the performance data used to calculate the October score ends on 30 September). However, contractors may challenge negative data at any time. For challenges received after the challenge period ends, the current month's score will only be flagged if and when the challenge is validated, or at the



discretion of the ABVS Administrator. The subsequent month's ABVS score must be flagged as challenged unless the challenge is resolved in the interim. Once an ABVS score is flagged, it will remain flagged until the challenge is resolved. Challenges to data that falls within the offset period will not be flagged since that data is not reflected in the ABVS score.

(v) The ABVS Administrator shall make every effort to resolve data challenges within ten working days. If the contractor and the ABVS Administrator can not arrive at a mutual agreement on challenged data, it becomes disputed data. Disputes which cannot be resolved will be elevated. Authority for resolution of disputed data is one level above the contracting officer. Award decisions resulting from reliance on disputed data must also be approved one level above the contracting officer.

(f) Award Justification. Contract files must be documented with the rationale supporting all award decisions, except those to the lowest priced and highest scored offer. The award decision must demonstrate how paying more than low price reduces performance risk. The award justification must be commensurate with the price difference between the awardee and the low offeror, i.e., the greater the difference in price, the stronger the award justification must be. There are several preprinted award justification forms available to assist with the documentation process. These forms can be supplemented with additional information as necessary.

(g) Synopsis. Commerce Business Daily synopses of solicitations made under this subpart shall indicate that, while price is a significant factor in the evaluation of offers, the final award decision will be based upon a combination of price and past performance.

(h) Solicitation Provision. When ABVS is used in source selection, the contracting officer must include in the solicitation a provision that specifies:

(i) Award will be made based on a comparative assessment of offerors' prices, and past performance;

(ii) Relative importance of price and past performance, and of quality and delivery;

(iii) Timeframe over which past performance will be evaluated;

(iv) Sources of the performance data;

(v) Other factors considered in the price/performance trade-off decision;

(vi) DSC focal point (address and telephone number) for questions/challenges;

(vii) Discrepant data resolution process;

(viii) A statement the award may be made to other than the low priced, technically acceptable offeror.

(i) Program Administration/Responsibilities.

(1) The ABVS Administrator is responsible for: controlling the weighting of relative importance of quality and delivery performance by FSC; receiving, tracking, and responding to contractor challenges; and controlling the DPACS challenge flag.

(2) The ABVS Administrator is the DSC focal point for any questions, requests for information or data access, and data challenges. Contractors may challenge data discrepancies in the DSC records by submitting documentation that identifies the questionable contract number and CLIN and evidence supporting the challenge to the Administrator.

(3) Upon receipt of a properly documented challenge, the Administrator will make every effort to expeditiously resolve the challenge. There will be instances where the Administrator has sufficient information to resolve the matter. In cases where the Administrator is

unable to resolve the matter, a copy of the challenged data will be forwarded to the responsible functional office (the office of primary responsibility (OPR)) for a decision. The OPR, represented by the responsible contracting officer, administrative contracting officer, or quality specialist must investigate the challenge and determine whether it has merit within 5 days of receipt. When the OPR determines the challenge can not be supported, the Administrator will be advised and the challenge flag removed. When the OPR determines the challenge has merit, the OPR is responsible for processing corrective updates to the appropriate databases, and providing to the Administrator confirmation of the corrections to the database. (See 15.613-92(e)(iii) for challenge protocol). The Administrator will have the ability to recalculate the ABVS score off-line upon request.

(4) In rare instances, the ABVS Administrator can exclude certain elements of past performance from the ABVS score. This may occur, for example, where a contractor has introduced a new manufacturing process or management system that will eliminate the previous problems and where the contractor is able to provide information from other customers supporting the improved performance. The OPR responsible for quality shall review and validate any corrective action that the contractor has taken and provide a recommendation as to whether the past performance should be excluded. Exclusion of past performance data is at the sole discretion of the DSC and must be approved by the chief of the contracting office.

(j) Other Uses for ABVS.

(1) Options. When exercise of an option is contemplated, the contractor's current ABVS score should be considered in determining whether exercising the option is the most advantageous method of satisfying the Government's needs. The contracting officer's decision to exercise an option at a higher price than what may otherwise be available (see FAR and DLAD 17.107(d)) should be based on the same evaluation factors that applied to the basic award;

(2) When determining whether to obtain a preaward survey.

(3) Verification of/or source for information in formal source selection.

**15.613-93 Phased Competition.**

**(a) Definition** - *Phased competition is a risk reduction strategy which provides for the development of business approaches, systems development, etc. under contract with subsequent down-select competitions among contractors for further development or full performance within the same contract.*

**(b) Application** - *Phased competition procedures may be appropriate when state of the art solutions are sought and significant development work is required by industry. The Government must first explore existing commercial methods and determine whether commercial solutions are available or can be readily adapted to the Government problem or requirement. Where a best commercial alternative is not apparent, or where limited development and adaptation are required, early industry involvement in exploring solutions can be elicited in the presolicitation stage through several alternative approaches addressed in DLAD sections 15.404 and 35.016. However, when state of the art solutions are sought and significant development work is required by industry, reliance on either a single Government solution or an untested commercial solution increases risk for both parties. The risk for industry is that the cost of development work required to submit a proposal will not be recouped if the proposal is not accepted. Such risk reduces industry's interest and willingness to offer innovative solutions. The risk for the Government is that the proposed approach will not meet the Government's requirements or provide the optimal solution. Risk can be reduced for both parties if development and testing are accomplished under contract through the use of a phased competition. While this is the classic method used to acquire major systems, it is also an appropriate method for business practice reengineering where state of the art solutions are being sought. Before using a phased competition, the Government must carefully weigh the costs and benefits inherent in this approach.*

(c) The Statement of Work (SOW). Either a general statement of need or a SOW as described below may be used for the first phase of a phased competition. See 15.613 regarding the use of statements of need in competitive negotiated procurements. This is in consonance with the order of precedence established in FAR Subpart 11.1. A SOW that engages industry participation would have the following features:

(i) It addresses the current state of operations and provides insight into future operating conditions;

(ii) It defines the desired business process future state in terms of the goals of the reengineering effort, and;

(iii) It limits specific requirements to essential Government needs, such as systems interface requirements, etc., that must be met in the reengineered business process.

The solicitation allows offerors the freedom to propose solutions to the Government and to describe how the proposal will meet the goals of the reengineering effort. Meaningful industry dialog can help the Government to further refine both the solicitation process and the SOW.

(d) SOW for Subsequent Phases. Solicitations should describe the content and format for deliverables at each phase of the competition. When this procedure is followed, the contractor's proposed approach, a deliverable which may require revision during negotiations, becomes the SOW for the subsequent phase. Task orders should incorporate the contractor's proposal by reference to prevent the disclosure of the contractor's strategy to competitors.

(e) Pricing of Phases. Because of the evolutionary nature of this process, the Government cannot reasonably expect industry to price each phase of development, testing, and/or implementation as of the closing date of the solicitation. Price proposals for phases beyond the initial priced phase can be obtained as deliverables under each subsequent phase of the contract when requirements for each subsequent phases are more fully defined. Under these circumstances, the SOW for the first phase should include a requirement for deliverables, such as the statement of work for contractor-proposed tasks for the second phase, and the prices proposed to accomplish this work. This procedure can be repeated in subsequent phases, as necessary.

(f) Competition. A phased competition is full and open competition where all responsible sources are afforded the opportunity to compete for the initial contract award. The competition includes the evaluation of written proposals for the first phase, and continues as the Government evaluates deliverables and performance during the subsequent phase(s). No justification and approval is required to issue task orders to continue performance in subsequent phases of a phased competition when the phases were included in the synopsis and the solicitation clearly describes the phased approach contemplated. (See FAR 1.505(b)(3))

(g) Source Selection through Phased Competition.

(i) During early industry involvement in this process, the Government may propose phases or work with industry to define the phases that will be used to develop, test, and implement contractual solutions for reengineering processes. Examples of phases that might be used are: concept development, proof of concept, and full implementation or production. During the first phase, the primary goal of the source selection should be to select capable contractors that have a sound understanding of the goals of the acquisition and a reasonable approach. Source selection should also consider the degree of difference in competing proposals to ensure the Government does not pay for duplicate development and testing. In the final phase, evaluation criteria should ensure that the prospective contractor(s) have sufficient background and resources to carry their proposed concept through to fruition.

(ii) The SOWs for phases beyond the first phase will develop and evolve through the phased competition process. For this reason, the solicitation should generally request proposals only for the first phase.

While the solicitation must include the criteria that will be used to evaluate performance and/or deliverables in each phase, the evaluation criteria for subsequent phases can be described only in general terms initially in the solicitation. However, definitized evaluation criteria must be developed and incorporated into the contract(s) before performance in the next phase is ordered. The same evaluation criteria must apply to all contractors.

(iii) Contractors may be asked at any phase to recommend additional evaluation criteria for subsequent phases. However, the same evaluation factors must apply to all contractors involved in a particular phase. When contract proposals differ greatly in their approach, the evaluation factors should allow evaluation of deliverables and performance in terms of the reengineering goals. This method affords the Government the flexibility to make a comparative assessment of different solutions. If evaluation criteria based on contractor suggestions are used, Government personnel must carefully review these factors before including them to ensure their applicability to all potential solutions, and that the use of these factors would not result in favoring one contractor over another. Evaluation factors should be discerning and should elicit information that will allow the evaluators to qualitatively distinguish differences in proposals.

(iv) The solicitation must clearly describe how the Government will conduct the procurement. The following types of statements must be included in a description of the procedures:

(A) The procurement uses a phased competitive approach in which the Government will evaluate deliverables and performance at the completion of each phase to determine which contractor(s) will be selected to continue into the subsequent phase(s);

(B) Only contractors participating in the immediately preceding phase will be considered for participation in the next phase;

(C) The Government intends for performance under full implementation or production to be performed by a contractor or contractors who have tested and developed their services/products under all previous phases of competition. Offerors selected must have sound concepts and the resources and background to carry this competition through to fruition;

(D) The Government reserves the right to make one or more awards as a result of the solicitation, and award to other than the lowest priced offeror after assessment of each offeror's technical and business proposal. The contract should also include the appropriate clauses and provisions regarding task and delivery order procedures under FAR Subpart 16.5; and,

(E) The Government reserves the right to discontinue performance at any phase of the competition.

(v) Normally, multiple awards are made for the initial phase with competitive down-selections in subsequent phases to determine the most promising contractor(s). However, if it is determined that only one of the proposals received is promising, the resulting contract should continue to allow Government evaluation of development and testing for each phase in the Government environment to manage the risk associated with a single strategy.

(h) Notification and Debriefing of Unsuccessful Offerors/Contractors. Care must be taken during debriefings to ensure no data is released that would affect the ongoing competition. The names of contractors selected should be fully disclosed at the time the initial award is made and later when subsequent orders are placed. Contractors shall be afforded the opportunity for a debriefing whenever they are eliminated from further participation in the contract. Adequate safeguards must be in place throughout all phases to protect proprietary information, trade secrets, or business confidential information, such as deliverables that will be evaluated to determine which contractor(s) will be selected to perform in subsequent phases.

(i) Contract Award. The scope of each contract awarded includes the potential for orders for all phases of contract performance. Task orders will be placed for work to be performed in each phase and this contract will be used, while the contractor remains in the competition, to move through each phase of contract performance.

(j) Cost or Pricing Data. Normally, cost or pricing data should not be requested in the initial phase of a phased competition, or when more than one contractor will participate in any subsequent phase. It may be appropriate to request information other than cost or pricing data (See FAR 15.804 for additional guidance), however, especially when contractor concepts differ greatly in their approach.

(k) Options. The contract may include horizontal options for additional periods of performance or vertical options for additional quantities during any single phase. For example, the Government may wish to include an option in the solicitation to test solutions at more than one site. Another example would be an option for additional years of performance by the selected contractor(s).

(l) Communications/Dialog with Contractors. During contract performance, the timely and accurate exchange of appropriate information between the Government and participating contractor(s) is essential. Information must be shared in a manner that precludes preferential treatment throughout all phases.

(m) Type of Contract. Both offerors and the contractors selected should be allowed the flexibility in their proposals to suggest the type of contract for each phase. The Government evaluation of proposals should include a review of the type of contract proposed in consonance with the approach proposed, and how the contract type fits with program goals when establishing negotiation objectives. Contract type may differ in each phase, resulting in a hybrid contract.

#### SUBPART 15.8 - PRICE NEGOTIATION

##### 15.801 Definitions.

"Cost or pricing data" also encompasses decrement factor information.

"Decrement factor information" is the historical data necessary to determine the average difference between vendors' and subcontractors' proposed prices and the actual prices negotiated by the contractor with a specific supplier, all suppliers, or suppliers for a specific contract, commodity, or commodity group.

15.803 General.

(c) Occasionally, the price is not as close to the negotiation objective as the contracting officer would like, but it cannot be judged unreasonable. In such cases, the file should contain a positive statement that the price is considered fair and reasonable under the circumstances and enumerate the circumstances. For every price reasonableness determination, the contracting officer shall accomplish price or cost/price analysis, as necessary, to determine the price either to be reasonable or unreasonable. The offeror's refusal to provide and/or certify cost or pricing data or information other than cost or pricing data does not relieve the contracting officer from the requirement to perform a proposal analysis; nor does such refusal provide a sufficient basis for determining the price unfair or unreasonable.

(d) Higher authority may be any level above the contracting officer, including the Commander (Administrator, **DAPSC** and DNSC). However, prior to referral of a proposed acquisition to HQ DLA, ATTN: MMPPP for action, the Commander (Administrator, **DAPSC** and DNSC) shall make a determination whether or not to personally negotiate with the contractor involved and attempt to delete those elements of the contractor's offer that render price or profit unreasonable. If not, a detailed memorandum setting forth the rationale shall be forwarded with the referral.

15.804 Cost or pricing data and information other than cost or pricing data.

15.804-1 Prohibition on obtaining cost or pricing data.

(b) Standards for exceptions from cost or pricing data requirements.

(5) Exceptional cases. The head of the contracting activity may, in exceptional cases, after review of the information submitted pursuant to the procedural requirements of 15.804-6(e), waive the requirements for submission or certification of cost or pricing data when one or more of the following applies:

(i) none of the statutorily-sanctioned exemptions (15.804-1(a)(1), -1(a)(2), and -1(a)(4)) exist,

(ii) there is insufficient data on which to base either an exemption and/or a price reasonableness determination (see 15.803(c)),

(iii) the Government was unable to obtain cost or pricing data in the face of an offeror's refusal, or whether

(iv) a price reasonableness determination can be made (see 15.803(c))

(90) Notwithstanding the existence of blanket waivers, the contracting officer must accomplish the price analysis required by FAR 15.805-1(b) to ensure that the overall price is fair and reasonable.

(91) The DoD waiver of submission of certified cost or pricing data from the Canadian Commercial Corporation (CCC) states that the integrity of the assurance of fair and reasonable prices by the Government of Canada can be assumed. However, where price analysis indicates a fair and reasonable price significantly different than that offered by CCC, the contracting officer should initiate discussions with the CCC to request confirmation of the price reasonableness determination. A brief explanation of why the confirmation is being requested, i.e., the results of the price analysis, should accompany the request.

15.804-2 Requiring cost or pricing data.

(a)(1) In determining whether an action meets the \$500,000 threshold for requiring cost or pricing data when,

(i) Pricing the contract award (other than an undefinitized contract action).

(90) Consider the base period and any priced option to be evaluated at time of award separately, except that the estimated value for an option to be exercised at time of award shall be considered on a combined basis with the estimated value for the base period.

(ii) Pricing the change or contract modification.

(90) Applicability of the requirement for certified cost or pricing data must be determined for the following actions:

(A) Exercise of priced options that has not been evaluated at time of award (see also 17.206(b)(90)),

(B) Definitization of undefinitized options,

(C) Definitization of other undefinitized contract actions, and

(D) Repricing actions, e.g., an actual cost type EPA, under Changes clause, claims, price reopener, and prospective repricing.

(91) The requirement for cost or pricing may be excepted for the following actions:

(A) Exercise of priced options which were evaluated at time of award,

(B) EPA based on established catalog or market prices or on cost indexes, and

(C) Actions for which an exemption is applied (see FAR 15.804 -3), e.g., when the price for an option is based on the price of a basic award for the same or similar item(s) for which one of the statutory exceptions apply; or when an EPA of other repricing action is based on a change in an established catalog price, established market price (includes cost or price indexes reflecting the market), or price set by law or regulation.

(b)(90) Contracting officers shall,

(i) identify in solicitations, any options which are subject to the requirement for cost or pricing data prior to award which are expected to be subject to such requirement prior to the exercise;

(ii) specify in solicitations where applicable, that the offeror must specifically identify on any certificate (FAR 15.804-4) required to be submitted and any evaluated option price(s) covered by the certificate; and,

(iii) identify in solicitations and resulting contracts any options expected to exceed \$500,000 which the contracting office does not plan to include in the preaward pricing evaluation and stipulate that as a prerequisite of exercise, they are subject to the submission and certification requirements of P.L. 87-653 as implemented by the applicable clause ( FAR 52.215-22 or 52.215-23), whichever will be included in the contract.

15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(b)(2) Solicitation instructions for submission of cost or pricing data shall include or reference in Section L, the SF 1411 instructions and price proposal format requirements specified at FAR 15.804-6(b)(1) and shall require identification of decrement factor information, defined at 15.801, as part of the data submission requirements.

(e) When the contractor refuses to submit or certify cost or pricing data the reasons why the data are needed and why they were not provided should be discussed with the contractor and confirmed in writing prior to escalation to higher Government and contractor management levels. In the event the efforts of the contracting officer and higher management are unsuccessful in obtaining the data, the matter shall be escalated, after review by the local pricing and contract review elements, to the head of the contracting activity (HCA) along with the following information:

(1) What steps were taken to:

(i) Secure essential cost or price data.

(ii) Secure the contractor's cooperation, and

(iii) Assure the contractor that the information furnished by the contractor would be adequately safeguarded.

(2) An explanation as to why an exemption cannot be based on current or recent prices for a similar item or any of the other bases for exemption (FAR 15.804 -1(a)(1),(2), or (4)) to the requirement for cost or pricing data.

(3) The contractor's written refusal to provide the cost or pricing data or a statement explaining why the contractor refuses to provide a written refusal.

(4) An explanation of whether, and under what circumstances, the offeror furnished cost or pricing data for prior contracts with this or another contracting office.

(5) The identification and results of attempts (including attempts made by the auditor, the ACO, and other contracting offices) to secure cost or pricing data concerning the current and prior contract actions, including date(s), contract award(s), and the names and organizational level of participants in the negotiations.

(6) A copy of the price analyses performed, which shall include a comparison with prior prices and an independent Government estimate, and results of the price reasonableness determination (see 15.803(c)).

(7) Substantiation that the item is mission essential.

(8) The alternatives to proceeding with the acquisition. (Also see 15.803(d).)

(9) The suggested course of action considering the alternatives in (8) above.

Negotiations with top management of the firm shall be conducted by the CCO and, as appropriate, by the Commander (Administrators, **DAPSC** and DNSC). When a contractor/subcontractor has refused to provide the required data for the first time, or when the Commander (Administrators, **DAPSC** and DNSC) has not personally negotiated with the contractor/subcontractor recently to obtain such data, the Commander (Administrators, **DAPSC** and DNSC) should attempt to secure the data. The Commander (Administrators, **DAPSC** and DNSC) shall execute a detailed memorandum setting forth the rationale for any decision not to personally negotiate for the data. This memorandum shall be included in the contract file, along with the above information and any Determination and Findings waiving the cost or pricing data requirements of 10 U.S.C. 2306(f)(1), as implemented by FAR 15.804-1(b)(5). In the event of waiver where the price could not be determined fair and reasonable, furnish an information copy of the Determination and Findings to HQ DLA, ATTN: MMPPP.

#### 15.804-7 Defective cost or pricing data.

(d)(90) If, following review by the pricing element and legal (see 1.691(a)) and approval in accordance with 15.807(b)(91), the contracting officer's planned settlement objective is less than 70 percent of the amount reported by the GAO, DoD IG, or DCAA, a copy of the approved briefing memorandum, including the audit and pricing reports and other relevant documentation (see 15.807(b)(91)(5) and (93)), shall be furnished for receipt in HQ DLA, ATTN: MMPPP at least 5 working days prior to initiating settlement action with the contractor.

#### 15.804-90 Cost or pricing data for indefinite quantity and requirements contracts.

FAR 16.503 and 16.504 state that estimated total quantities to be ordered under requirements and indefinite quantity contracts respectively should be as realistic as possible. This information, along with the estimated number of orders and variability in order quantities, is required for realistic contract pricing. To avoid delays when contract price data must be obtained under these types of contracts, the solicitation should provide this information and specify that--

(1) It should be used by the offeror in developing the unit price(s) proposed;

(2) The price proposal must include an explanation of the production quantity and period used in developing the proposed unit price(s) (The planned production quantity may be greater than, equal to, or less than the maximum quantity of an indefinite quantity contract/total estimated quantity of requirements contract, exclusive of any contract options.); and

(3) The offeror is requested to quantify any reduction in the offered unit price(s) available if the minimum order quantity were raised and/or a guaranteed minimum contract quantity established.

#### 15.805 Proposal analysis.

##### 15.805-1 General.

(a)(90) The contracting officer (the price analyst and/or value engineering/other technical specialist when requested to furnish an analysis of the proposal) shall identify or have identified from existing data bases and/or files, any independent Government estimate {"should cost"} that had been performed; and include in the proposal evaluation report and prenegotiation briefing memorandum, comments as to the extent of utility of the IGE results as analytical or corroborative information for determining price reasonableness, establishing negotiation objectives, and for contract negotiations.

(b) Whenever cost or pricing data or catalog/market price exemption data is obtained, the analysis shall also address the reasonableness of the offered price in comparison to prior prices paid for the item.

(90) The cost/price analysis element shall provide:

(1) A price or cost/price analysis report, as appropriate, for:



(i) all sealed bid acquisitions of \$500,000 or more where a sole responsive bid is received, and

(ii) all negotiated acquisitions (including awards to the Canadian Commercial Corporation) of \$500,000 or more (for FPI, see 8.602(a)(90)(iii)), where adequate price competition was not received (see FAR 15.804-1(b)(1) and (2)), unless the contracting officer performs a price analysis (including, for rebuys, a comparison to prices paid for the same item in accordance with 15.805-2(b)) which documents that the price is fair and reasonable and is:

(A) "based on" adequate price competition (FAR 15.804-1(b)(1)(iii)), or

(B) supported by information which substantiates an established catalog or market price (FAR 15.804-1(b)(2)), or

(C) for a modified commercial item where any difference is relatively minor (e.g., modified by substituting a different color paint, adding, modifying or leaving off a mounting bracket, gauge, or identification plate, etc.) and is supported by information which substantiates a "based on" established catalog price, or (FAR 15.804-1(b)(3)).

(D) set by law or regulation (FAR 15.804-1(b)(3)).

(2) A price analysis or cost/price analysis, as appropriate, for any other acquisition where assistance is deemed necessary by and requested by the contracting officer.

(3) Recommendations and coordination on all planned actions involving the "resolution" and "disposition" (see 15.890(91)(2) and (3) respectively) of defective pricing and other "reportable" audits, and instances of suspected overpricing.

(4) All reports of reviews covering multiple line items shall include comments on the results of an assessment for unbalanced bids or offered prices (FAR Part 15.814).

#### 15.805-2 Price analysis.

(b) When a comparison or trend analysis to prior prices is used, the rationale and amount of allowance (negative, zero, or positive adjustment) for each factor cited in the FAR shall be included in documentation of the price reasonableness determination, along with a statement of how these prior prices were determined reasonable.

(d) When a price appearing in a contractor catalog or price list is utilized to determine price reasonableness, the contracting officer shall include in the reasonableness determination, documentation of the steps taken in confirming that the price list is current and depicts prices at which substantial commercial sales are currently being made or were last made. (If sufficient sales to demonstrate commerciality cannot be documented, see 15.805-3(90).)

(e) The standard price, budgetary estimates, and provisioning estimates are invalid bases for comparative price analysis and price reasonableness determinations.

#### 15.805-3 Cost analysis.

(90) When a contractor catalog or other price developed using proposed, recommended, or approved forward pricing rates, factors, and/or a formula pricing methodology is utilized to determine price reasonableness, the contracting officer shall include in the price reasonableness determination documentation of the steps taken in confirming that the rates and factors and/or formula pricing methodology and catalog prices are current and have been reviewed and determined reasonable, the review date, and the office accomplishing that review (i.e., normally the field ACO). Use of this technique also requires documentation that the direct material quantities/prices, direct labor hours, and/or other bases against which the rates and factors are applied have been reviewed and determined reasonable.

(c)(1) The comparison may be to actual costs incurred for the same item or for a similar item (with any necessary adjustments to achieve comparability of market conditions, quantities, time periods, and terms and conditions) by the same or another supplier.

#### 15.805-5 Field pricing support.

(i) For price proposals involving significant subcontracted amounts, requests for field pricing reviews should solicit decrement factor information (see 15.801) relevant to the award. Where extreme urgency necessitates award prior to completion of a subcontract review, negotiation of an appropriate decrement would obviate the need for a reopener clause (see DFARS 215.811-70(g)(2)(vi)) or an undefinitized contractual instrument.

(k) The list shall be retained with the contract file.

#### 15.807 Prenegotiation objectives.

(b)(90) Whenever it is decided that the contract auditor will not be participating in the prenegotiation and/or price negotiation meeting for a contracting action which involved an audit, the contracting officer shall document in the prenegotiation briefing memorandum (PBM) and/or price negotiation memorandum (PNM), as applicable, the results of discussions with the auditor or other basis for such decision.

(b)(91) Prior to the beginning of any contract price negotiation, the award of a competitive negotiated contract, or the disposition of any other recommended contract action cited below, a briefing of the proposed negotiation, award, or settlement shall be presented to the chief of the contracting office (CCO) for approval:

(1) Every award exceeding \$25,000 (\$100,000 for DSCs) of a letter contract, undefinitized BOA order or other undefinitized instrument. (The responsibility in paragraph (b)(91) above is delegable only (a) for awards that do not exceed \$250,000 (DSCs only), without power of redelegation, to one level below the CCO, and (b) where filling a backordered or nonstocked requirement meeting DLA's criteria for heightened management (see 17.7404 -1(a)).

(2) Every definitization exceeding \$100,000 (\$250,000 for DSCs) of a letter contract, undefinitized BOA order, or other undefinitized instrument. (The responsibility in paragraph (b)(91) above is not delegable.)

(3) Every contract action involving a negotiated contract that exceeds \$100,000, (\$500,000 for the DSCs) including repricing and final pricing action. (For DSCs only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO when the contract action does not exceed \$1,000,000.)

(4) "Resolution" of reports of defective cost or pricing data (15.804 -7(d)(90)) and other "reportable" audits (see 15.890(91)(1)). (For DSCs only, the responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO if the value of the action does not exceed \$100,000.) and

(5) Any action not cited in (1) thru (4) above which requires HQ DLA review and approval. (The responsibility in paragraph (b)(91) above is delegable, without power of redelegation, to one level below the CCO.)

(b)(92) At a minimum, the briefing shall cover:

(1) The acquisition situation, including any unique features.

(2) Previous price history.

(3) Where price negotiations are contemplated, the analytical methods utilized in establishing the prenegotiation objectives (i.e., price, improved delivery schedule, etc.):

(i) For proposals involving an SF 1448, Proposed Cover Sheet (Cost or Pricing Data Not Required), discuss and include a written schedule showing the buildup of the offeror's price and any significant differences between the proposed price negotiation objectives (i.e., minimum, target, and maximum prices) and the proposed price, and any audit, ACO, or cost/price analyst recommendations. Also discuss when there are dissimilarities between the item or quantity offered and the commercial item for which a catalog price exists;

(ii) For acquisitions to be awarded based on cost or pricing data (SF 1411, Contract Pricing Proposal Cover Sheet), or cost realism data discuss the buildup of the offeror's price by element of cost and profit, and any significant differences between the proposed price negotiation objectives (i.e., includes minimum, target, and maximum objectives for costs, profit, fee, and price) and the contractor's proposed price, audit findings, technical report comments, ACO recommendations, and cost/price analyst recommendations, together with rationale supporting the overall price negotiation objectives. Include a comparative schedule showing each element of cost and profit included in the contractor's proposal; the recommendations contained in the audit, technical, and field pricing reports; any independent Government estimate (IGE), the cost/price analyst's recommendations; and the price negotiation objectives.

(iii) Negotiation plan (i.e., phone or in person).

(iv) Anticipated negotiation problems (e.g., contingencies, required deletions or changes in contract clause, etc.) and proposed solutions.

(4) Where price negotiations are not contemplated, the analytical methods utilized in determining price reasonableness:

(i) If award is to be made as a result of initial competitive offers received, include a written schedule comparing the offerors' prices, price history, and any IGE (see 15.805 -1(a)).

(ii) If award is to be made following BAFOs received, address the nature and results of discussions (see Subpart 15.6) and offers, include a written schedule comparing the initial

offers and BAFOs if exemption data or cost/cost realism data are obtained, also include the requirements (excluding prenegotiation price objectives) of (3)(i) or (3)(ii) above respectively.

(iii) If award is to be made based on competitive prices of current or recent awards for the same or comparable items, include a written schedule comparing the offered prices to such recent competitive award prices and any IGE (see 15.805 -1(a)).

(iv) For other sole offers, include a written schedule showing the price for each line item (and offeror's buildup by element of cost and price, if known, with a written comparison to any significant differences in the audit findings or review recommendations).

(b)(93) A memorandum summarizing the principal elements of the briefing as cited in 15.807(b)(90) and 15.807(b)(92)(1)-(4), the attendees, and the results of the briefing (including any significant comments or specific recommendations made by briefing attendees) and attaching the price schedule used in the briefing, shall be prepared for signature by the approving official.

(b)(94) The appropriate prenegotiation approval authority shall be notified of the need for any significant change in negotiation objectives. A copy of the approval of revised price objectives shall be made an attachment to the PBM.

(b)(95) The following are exempt from the requirement for prenegotiation/preaward briefings:

(1) Perishable subsistence acquisitions.

(2) Subsistence commodity market items that are subject to marketing exigencies, such as coffee, flour, and salad oil.

(b)(96) The following exceptions are authorized to the requirements for a prenegotiation briefing to the official specified at 15.807(b)(91):

(1) DFSC petroleum acquisitions not involving a cost proposal audit, that consist entirely of unrelated line items that are consolidated solely for administrative purposes. The briefing in such cases may be conducted at a level lower than the chief of the contracting office when no single line item is valued \$100,000 or more, even though the total acquisition is valued \$500,000 or more.

(2) For DPSC, subsistence actions cited at 15.807(b)(91)(1)-(6) may be delegated, regardless of dollar value, by the chief of the contracting office to the Defense Subsistence Region commanders, with redelegation authorized to the purchasing division chiefs.

(3) Orders against Federal Supply Schedules or mandatory orders placed under the Javits-Wagner-O'Day Act (FAR Subpart 8.7).

15.808 Price negotiation memorandum.

(a) While excessive detail should be avoided, the PNM, standing alone, must convince all reviewers that the price negotiated (**or awarded without negotiations**) was reasonable, given the circumstances of the particular acquisition. Although the content will vary depending on the magnitude of the contract, contract type, cost or pricing data obtained, the extent of negotiations, etc., a standard format should be used. The PNM should have the following subdivisions: "Subject," "Introductory Summary," "Particulars," "Procurement Situation," "Negotiation Summary," and "Miscellaneous." For acquisitions involving cost or pricing data, the Negotiation Summary shall include a schedule reflecting each element of cost and profit in the contractor's proposal, the approved negotiation objectives, any revised proposal or negotiation objective, and the final negotiated amount. A copy of the PBM, along with any changes thereto, shall accompany and be listed as an attachment to the PNM. A copy of the PNM shall be furnished to the cost/price analyst, value engineer, and/or other technical specialist that was involved in the price review or negotiation.

(b)(90) When an IGE was furnished for assistance in proposal evaluation, the contracting officer should assure information on its utility is included in the Contracting Technical Data File and any other local data bases for future reference. Additionally, the contracting officer should forward this information, along with any specific suggestions based on lessons learned on the buy, to the office(s) preparing and furnishing the IGE.

#### **15.811 Estimating Systems**

**Refer to DFARS 215.811-70, Disclosure, maintenance, and review requirements, 215.811-70(g)(2)(vi) and (3). See subpart 17.92.**

15.890 Follow-up on contract audit reports.

(90) Responsibility of the chief of the contracting office. The contract followup official for DLA contracting offices (the Executive Director, Procurement **Management**) has designated the chief of the contracting office as the official responsible for full and effective implementation of the requirements of DoDD 7640.2, Policy for Follow-up on Contract Audit Reports (**attachment 2 of PROCLTR 96-41**). A local contract audit focal point (the cost/price analysis element, where one exists) shall be established to assist in discharging the tracking and reporting requirements of the Directive (see 15.890(92)).

(91) Responsibilities of contracting officers.

(1) Promptly upon receipt of a contract audit report involving indirect cost rates, defective pricing, incurred costs, final pricing, terminations, claims, cost accounting standards, and reviews of a contractor's system the contracting officer shall furnish a copy of the report to the local contract audit followup focal point, and, if "reportable" (see DoDD 7640.2, paragraph F.3.), a detailed milestone plan for timely "resolution" and "disposition" (see 15.890(91)(2) and (3)). Updated milestone plans, reflecting the actual dates milestones were achieved and revised target dates, shall be forwarded to the local contract audit followup focal point at the time any milestone is achieved or missed.

(2) Contracting officers shall "resolve" any differences between their planned action and that recommended by the contract audit activity for all "reportable" audits. The contracting officer shall accomplish the required "resolution" promptly, and in no case later than 6 months following issuance of the audit report (P.L. 96-527). "Resolution" occurs upon approval obtained, in accordance with local review procedures, of the planned negotiation/settlement objectives.

(3) The contracting officer shall endeavor to accomplish disposition of all audit reports as soon as possible after "resolution." "Disposition" should normally occur within 12 months following audit report issuance. As stated in Enclosure 1 to DoDD 7640.2 a reportable audit is closed when "disposition" occurs, i.e.:

(i) The contractor implements the audit recommendations of the contracting officer's decision; or

(ii) The contracting officer negotiates a settlement with the contractor and a contractual document has been executed; or,

(iii) The contracting officer issues a final decision pursuant to the Disputes Clause, and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA). (Should the contractor appeal to the Claims Court within the 12 months after final decision, the audit must be reinstated as an open report in litigation); or

(iv) A decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court and any corrective actions directed by the Board or Court have been completed and a contractual document has been executed; or

(v) Audit reports have been superseded by, or incorporated into, a subsequent report; or

(vi) Any corrective actions deemed necessary by the contracting officer have been taken, so that no further actions can be reasonably anticipated.

(4) In addition:

(i) Upon completion of the "disposition" action, the contracting officer shall promptly furnish a memorandum of actions taken to the local contract audit followup focal point, the ACO, and to the auditor (DoDD 7640.2, paragraph F.5.a.).

(ii) When award does not result to the contractor whose offer was subject to a preaward audit report (due to cancellation, award to a competitor, etc.), the contracting officer shall promptly provide written notification to the local contract audit followup focal point, the ACO, to the auditor (DoDD 7640.2, paragraph F.5.b.).

(92) Responsibilities of contract audit followup focal points. The contract audit followup focal point is responsible for tracking and reporting the status of audit reports as specified below:

(1) Tracking every contract audit report, excluding "nonreportable audits," using milestone status information furnished by the contracting officer. The current status of each action is to be maintained in a log or similar document that includes all information required by the semiannual contract audit followup status report.

(2) Preparing the semiannual report of "open" and "closed" audits (formats in DoDD 7640.2) for submission by the chief of the contracting office and receipt in HQ DLA, ATTN: MMPPP, not

later than 10 April and 10 October of each year, along with a current milestone chart on each open audit (see 15.890(92)(1)). Negative reports are required. Facsimile the report, if necessary, to meet these deadlines.

#### SUBPART 15.9 - PROFIT

##### 15.903 Contracting officer responsibilities.

(b)(3) Approval of an alternate structured approach required for other than awards cited in DFARS 215.903(b)(3)(ii) may be redelegated not lower than the chief of the contracting office. The Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division, without power of redelegation. Promptly upon execution, a copy of each approval shall be furnished to HQ DLA, MMPPP.

(e)(70) Include documentation of the rationale and derivation of the profit factors and amounts on the DD Form 1547 approved at the time of the prenegotiation briefing in the prenegotiation briefing memorandum or attach it thereto, e.g., as a separate attachment or as part of the price/cost analysis report.

##### 15.970 DD Form 1547, Record of Weighted Guidelines Application.

(c)(2) All blocks of the DD Form 1547, Record of Weighted Guidelines Application, shall be completed whenever an alternate structured approach is utilized. When a zero weight is assigned to one or more of the factors specified in DFARS 215.971-1(a), or additional factors are utilized, complete rationale shall be documented.

##### 15.971-4 Facilities capital employed.

(b)(2) See DFARS 215.871-5 for the treatment of Facilities Capital Cost of Money on production special tooling and production special test equipment.